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11 UNITED STATES DISTRICT COURT
12 FOR THE EASTERN DISTRICT OF WASHINGTON
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14 JEREMY OLSEN,

15 Plaintiff,

16 v.

17 XAVIER BECERRA, in his official
18 capacity as Secretary of the United States
19 Department of Health and Human
20 Services,

21 Defendant.

No. 2:21-CV-00326-TOR

MOTION TO AMEND JUDGMENT

1/6/23

Without Oral Argument

22 Defendant Xavier Becerra, in his official capacity as Secretary of the United
23 States Department of Health and Human Services, through counsel, moves pursuant to
24 Federal Rule of Civil Procedure 59(e) for an order amending the judgment entered on
25 November 23, 2022 (ECF No. 71).

26 The Court granted summary judgment for Defendant on the ground that it lacks
27 jurisdiction over Plaintiff's claims. ECF No. 70 at 5-7. Both the summary judgment
28 order and the judgment reflect that the case was dismissed with prejudice.

1 Defendant moves for an amended judgment dismissing the case *without*
2 prejudice. Because the case was dismissed for jurisdictional reasons, rather than a
3 decision on the merits, the dismissal should be without prejudice. *See Barke v. Banks*,
4 25 F.4th 714, 721 (9th Cir. 2022) (dismissal for lack of jurisdiction must be entered
5 without prejudice); *Tur v. YouTube, Inc.*, 562 F.3d 1212, 1214 (9th Cir. 2009)
6 (dismissal on mootness grounds is a dismissal for lack of jurisdiction); *see also* ECF
7 No. 65 at 20 (requesting dismissal without prejudice for lack of jurisdiction).
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10 DATED this 29th day of November, 2022.

11 Vanessa R. Waldref
12 United States Attorney

13 *s/John T. Drake*
14 Brian M. Donovan
15 John T. Drake
16 Assistant United States Attorneys
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CERTIFICATE OF SERVICE

I hereby certify that on November 29, 2022, I caused to be delivered via the method listed below the document to which this Certificate of Service is attached (plus any exhibits and/or attachments) to the following:

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s/John T. Drake
John T. Drake